ORCHARD CIRCLE SDN BHD v. PENTADBIR TANAH DAERAH HULU LANGAT & ANOR

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
AZMAN ABDULLAH JCA
CHOO KAH SING JCA
[CIVIL APPEAL NO: B-01(A)-533-07-2022]
13 MARCH 2024

Abstract – *(i) It is critical to examine the requirement of the law stipulated in the National Land Code ('NLC') in order to determine whether the surrender of a piece of land has been effected in law. The surrender of a land can only be construed as effected upon the compliance of s. 201(4) of the NLC. A failure to adhere with the relevant provisions in the NLC can result in grave doubt being cast on the validity of the surrender; (ii) When an impugned land has yet to be surrendered in law, the landowner ought to be accorded the right to present its case and not be deprived of the right to a proper assessment exercise of value of the impugned land. Article 13(2) of the Federal Constitution accords a landowner the fundamental right to receive an adequate compensation.*

LAND LAW: *Acquisition of land – Compensation – Surrender of land – Whether land effectively surrendered to state authority according to Part Twelve of National Land Code ('NLC') – Whether procedure for surrender of land complied with – Whether s. 201(4) of NLC adhered to – Whether appellant accorded right to present case on basis that land yet to be surrendered in law – Whether appellant could be deprived of right to proper assessment exercise of value of land – Whether appellant accorded fundamental right to receive adequate compensation – Federal Constitution, art. 13(2)*

This appeal was in relation to a land reference proceeding. The appellant, who was the landowner of the piece of land ('land'), was not satisfied with one part of the decision of the High Court to maintain a nominal award granted by the Land Administrator. Therefore, the appellant filed this appeal. The facts were that on 11 January 1999, the appellant submitted a Form 12B (application for surrender of land) to the Land Administrator pursuant to s. 200 of the National Land Code ('NLC'). Form 12B was an application for approval to surrender part of the appellant's lands, namely Lot 2629 and Lot 2630. The appellant surrendered part of its land for the purpose of construction which was a part of a commercial development ('development project') which the appellant was the owner and developer of the project. On 20 December 2001, the Selangor State Authority published in the Selangor Government *Gazette* Bil No 1965 ('the *Gazette*') a Borang D

pursuant to s. 8 of the Land Acquisition Act 1960 ('LAA') declaring that the subject land would be acquired for public purpose. The intended acquisition of the subject land was for the purpose of construction of part of a highway project known as the SILK Highway. The High Court held that the impugned land had been surrendered, and therefore, that surrendered portion should not be included in the calculation of the compensation award. The High Court had referred to s. 37(2) of the LAA and held that no objection could be made to the amount of compensation award for acquisition of the impugned land as the sum awarded did not exceed RM3,000. The appellant contended that the impugned land was not surrendered because s. 196 to s. 201 of the NLC were not complied with at the time the Borang D dated 10 December 2001 was published in the *Gazette* on 20 December 2001. Therefore, the Land Administrator, as well as the High Court Judge ('HCJ'), were wrong to find that the appellant had surrendered the impugned land before the *Gazette* was published. The first respondent, however, contended that the appellant had in fact surrendered the impugned land on 11 January 1999, as the Form 12B for the surrender of the impugned land was approved on the same day with the endorsement by the Director of Land and Mines, Selangor. In summary, the first respondent submitted that in fact and law, the appellant had effectively surrendered the impugned land on 11 January 1999. The second respondent contended that the appellant's appeal was in substance an appeal against the amount of the compensation award, and that the issue of whether the impugned land had or had not been surrendered at the material time was a question of fact, and not a question of law. Further, the second respondent submitted that no value could be assessed for the impugned land that had been surrendered. Before this court, the appellant raised one pertinent question of law for determination: whether a total of 17,284,67m^2 (impugned land) out of 19,123.77m^2 of the subject land for acquisition, namely Lot 2630 and Lot 8630 (subject land) had or had not been surrendered to the state authority according to the NLC under Part Twelve – Surrender of Title as at 20 December 2001.

Held (allowing appeal)
Per Choo Kah Sing JCA delivering the judgment of the court:

(1) The Land Administrator, during the land inquiry, went into finding of facts pertaining to the issue whether the impugned land had or had not been surrendered. The Land Administrator considered the issues of surrender of the impugned land and the compensation amount and prepared and served the award in Borang H (s. 16 of the LAA) to the appellant. In the award, it was decided that there would be a nominal payment for the impugned land. The Land Administrator considered that the impugned land had been surrendered through the submission of Form 12B. The Land Administrator's conclusion that the impugned land had already been surrendered which was premised only on such finding

of fact was questionable. The Land Administrator and the HCJ did not examine the requirements of the law in the NLC to see whether the surrender of the impugned land had been effected in law. It was necessary to examine the provisions of the NLC in Part Twelve – Surrender of Title, particularly from s. 196 to s. 201 of the NLC, in order to determine when the surrender of the impugned land had been effected under the NLC. The question raised by the appellant was in a form of a question of fact, but in substance was a question of law. Hence, this appellant's appeal met the threshold of appealability under s. 49(1) of the LAA. (paras 14-16)

(2) It was critical to examine the requirement of the law stipulated in the NLC, not extrinsic facts, in order to determine whether the surrender of the impugned land had been effected in law. The date the Form 12B was approved by the Director of Land and Mines, Selangor, could not be equated as the date the impugned land was effectively surrendered. The law required that submission of Form 12B must be accompanied by payment of the prescribed fee, a plan showing the details of the proposed surrendered land, written consents from relevant parties (as stipulated in s. 196(2)(a) to (d) of the NLC) and the issue document of title to the land. Herein, the issue of document of title to the impugned land was not submitted together with the Form 12B. (paras 20-23)

(3) Despite the absence of the issue document of title, the application was approved by the Director of Land and Mines, Selangor on 11 January 1999. According to s. 201(4) of the NLC, upon approval of the surrender, it was mandatory that the Land Administrator shall (i) revise the rent payable by the proprietor; (ii) notify the proprietor of the approval and revised rent; and (iii) make, or cause to be made, a memorial of the surrender on the register and issue documents of title to the land. The surrender of the impugned land could only be construed as effected upon the compliance of s. 201(4)(a) to (c) of the NLC. The word 'shall' connote mandatory obligation on the part of the Land Administrator to comply with the requirements in s. 201(4)(a) to (c) of the NLC. Herein, there was no revision of the payable rent, no notification to the appellant of the approval and of any revised rent and no memorial of the surrender was made on the register and issue documents of title to the impugned land on or before 20 December 2001 (the date of the *Gazette*) or 10 December 2001 (the date in the Borang D). Section 201(4) of the NLC was not complied with on or before 20 December 2001 or 10 December 2001 as well as at the time the second land inquiry was held in year 2011. (paras 23-30)

(4) Failure to comply with the relevant provisions in the NLC, particularly s. 201(4)(a) to (c) could result in grave doubt being cast on the validity of the surrender on 11 January 1999. There were provisions of the NLC other than s. 201(4) that were not adhered to. There was no plan

showing the details of the proposed surrender land (specifically the impugned land) and the delivery of the issue document of title as required under s. 200(1)(b) and (d) of the NLC, and read together with sub-ss. (3) and (4) of the same provision. The approach taken by the High Court for the compensation in relation to the impugned land was on the basis that the impugned land had already been surrendered. Hence, the High Court fell into error of law in accepting that the impugned land could not be assessed because it had already been surrendered. (paras 35-37)

(5) Notwithstanding that the impugned land was intended to be surrendered for the purpose of the appellant's development project at the material time, that could not deprive the appellant's right to a proper assessment exercise of the value of the impugned land which had not been effectively surrendered according to the NLC. The appellant ought to be accorded the right to present its case on the basis that the impugned land had yet to be surrendered in law at the material time. Article 13(2) of the Federal Constitution accords the appellant a fundamental right to receive an adequate compensation. What could be the adequate compensation amount based on the peculiar facts of this case was a question for the HCJ, assisted by the assessors, to determine. The fundamental right of the appellant should be protected regardless of what the adequate compensation amount would be at the end of the assessment exercise. In the premises, based on the findings of this court on the law of effective surrender of land under the NLC, the question of law posed must therefore be answered in the negative. (paras 41 & 42)

Case(s) referred to:

Bayangan Sepadu Sdn Bhd v. Jabatan Pengairan Dan Saliran Negeri Selangor & Ors [2022] 2 CLJ 1 FC ***(refd)***

Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors [2021] 1 CLJ 1 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13(2)

Land Acquisition (Amendment) Act 2016, s. 7

Land Acquisition Act 1960, ss. 8(4), 16, 37(2), 49(1)

National Land Code, ss. 196(1)(c), (2)(a), (b), (c), (d), 197, 198, 199, 200(1)(b), (d), (3), (4), 201(4)(a), (b), (c)

For the appellant - Sri Dev Nair & Mohd Hafiz; M/s Sri Dev & Naila

For the 1st respondent - Etty Eliany Tesno & Amelia Masran; SLAs

For the 2nd respondent - Karen Lee Foong Voon & Cheah Kha Mun; M/s Wong Kian Kheong

[Editor's note: Appeal from High Court, Shah Alam; Land Reference Nos: 15-99-09-2012 & 15-100-09-2012 (overruled).]

Reported by Suhainah Wahiduddin

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JUDGMENT

Choo Kah Sing JCA:

Introduction

[1] This appeal is in relation to a land reference proceeding at the High Court of Shah Alam *via* Proceeding No. 15-99-09-2012. The appellant, Orchard Circle Sdn Bhd, who was the landowner, was not satisfied with one part of the decision of the High Court to maintain the nominal award granted by the Land Administrator be maintained. Therefore, the appellant filed this appeal.

[2] Before this court, the appellant's counsel raised one pertinent question of law for determination – whether a total of 17,284.67m^2 (the impugned land) out of 19,123.77m^2 of the subject land for acquisition, namely Lot 2630 and Lot 8630 (the subject land), had or had not been surrendered to the State Authority according to the National Land Code (NLC) under Part Twelve – Surrender of Title as at 20 December 2001.

[3] The outcome of the finding to the question of law would determine whether the appellant had been deprived of its right for the impugned land to be properly valued in an assessment exercise at the land inquiry before the Land Administrator.

Salient Facts

[4] The learned High Court Judge in her judgment has set out the history of the case leading to the land reference proceeding at the High Court (see paras. 3 to 23 of Her Ladyship's judgment; see also *Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors* [2021] 1 CLJ 1; [2021] 1 MLJ 180). This court will not repeat what was stated by the learned High Court Judge here, but will set out only the salient facts relevant to the question of law.

Surrender Of The Subject Land

[5] On 11 January 1999, the appellant submitted Form 12B (application for surrender of land) to the Land Administrator of Hulu Langat District pursuant to s. 200 of the NLC. Form 12B was an application for approval to surrender part of the appellant's lands, namely Lot 2629 and Lot 2630. The appellant surrendered part of its land for the purpose of construction of "Jalan, Simpanan Parit JPS, Kolam Takungan Air JPS, Taman Bandar, Tempat Letak Kereta, Buffer Zone". The construction of the road and among others were necessary as part of a commercial development project known as "Pusat Dagangan Putra Kajang" (the development project) which the appellant was the owner and developer of the project.

Declaration Of Acquisition

[6] On 20 December 2001, almost two years after Form 12B of the NLC was submitted for approval by the appellant, the Selangor State Authority published in the Selangor Government *Gazette* Bil No 1965 dated 20 December 2001 (the *Gazette*) a Borang D pursuant to s. 8 of the Land Acquisition Act 1960 (LAA) declaring that the subject land would be acquired for public purpose. The intended acquisition of the subject land was for the purpose of construction of part of a highway project known as "Lebuhraya Penyuraian Trafik Jalan Lingkaran Kajang" or the "SILK Highway".

(Note: the declaration published in the *Gazette* was before the amendment of s. 8 of the LAA. The present s. 8 of the LAA came into force on 1 December 2017 [PU(B) 564/2017] *via* s. 7 of the Land Acquisition (Amendment) Act 2016 [Act A1517]).

At The High Court

[7] The learned High Court Judge held at para. 51 of her judgment that the impugned land had been surrendered, and therefore, that surrendered portion should not be included in the calculation of the compensation award. Further, the learned High Court Judge referred to s. 37(2) of the LAA and held that no objection could be made to the amount of compensation awarded for the acquisition of the impugned land as the sum awarded did not exceed RM3,000. The learned High Court Judge concluded as follows:

> [54] For these reasons, it could be argued that OC (the appellant) cannot bring a land reference on the surrendered portion amounting to 17,284.67 square meters as the nominal amount of RM10.00 does not exceed three thousand ringgit as provided in subsection 37(2) of the LAA.

The Finding Of This Court

The Main Thrust Of The Parties' Contentions In The Appeal

[8] The appellant contended that the impugned land was not surrendered because ss. 196 to 201 of the NLC were not complied with at the time the Borang D dated 10 December 2001 was published in the *Gazette* on 20 December 2001. Therefore, the Land Administrator, as well as the High Court Judge, were wrong to find that the appellant had surrendered the impugned land before the *Gazette* was published. The appellant's counsel submitted that the Land Administrator's award of only a nominal sum of RM10 as the compensation award for the impugned land was erroneous in law.

[9] The first respondent, PTD Hulu Langat, contended that the appellant had in fact surrendered the impugned land on 11 January 1999, as the Form 12B for the surrender of the impugned land was approved on the same day with the endorsement by the Director of Land and Mines, Selangor.

Following from the approval of the surrender of the impugned land, the appellant had obtained its revised layout plan approved by Majlis Perbandaran Kajang (MPKJ) on 25 April 2000. In summary, the first respondent's counsel submitted that in fact and law the appellant had effectively surrendered the impugned land on 11 January 1999. There were other issues raised in the submission of the first respondent's counsel, but they were not in response to the question of law raised by the appellant before this court.

[10] The second respondent contended that the appellant's appeal was in substance an appeal against the amount of the compensation award, and that the issue of whether the impugned land had or had not been surrendered at the material time is a question of fact, and not a question of law. Further, the second respondent's counsel submitted that no value could be assessed for the impugned land that had been surrendered. In addition to that, the second respondent's counsel submitted that the appellant's valuation report is unsustainable for various reasons, which were highlighted in the written submission.

Issue Of Questions Of Fact And Law

[11] It is trite that there shall be no appeal against the decision of the High Court when the decision comprises of an award of compensation (see s. 49(1) of the LAA). In this instant case, the appellant raised a question which is whether the impugned land had or had not been surrendered. This question, in the opinion of this court, raises a question of fact as well as law.

[12] The finding of whether the procedure for surrender of the impugned land had or had not been complied with is indeed a question of fact. However, the finding of when the surrender of the impugned land took effect is a question of law. In order to determine the later, it is inevitable that the exercise has to encroach onto the former. Therefore, the question raised by the appellant contains a mixture of both fact and law. The second respondent's counsel's submission that there was no question of law raised before this court is not entirely correct.

[13] During the land inquiry held on 7 June 2011, the Land Administrator, Tuan Hj Che Roslan bin Che Daud, went into the finding of facts pertaining to the issue of whether the impugned land had or had not been surrendered. Three witnesses from various agencies were called to give their statements, namely Encik Nizam bin Sahari from Jabatan Perancang Bandar Majlis Perbandaran Kajang (previous designation), Puan Ruzilawati binti Surib from Unit Perundangan (Bahagian Pengurusan Tanah) Pejabat Tanah Daerah Hulu Langat and Encik Bahrin bin Mahat from JKPTG. All three witnesses gave statements related to their involvement in the appellant's applications for the approval of pre-comp and layout plans in relation to the development project, submission of subdivision and surrender of the appellant's lands.

[14] The land inquiry proceeded for several days with intervals in between (7 June 2011, 28 June 2011, 8 September 2011, 6 October 2011 and 17 November 2011). The Land Administrator considered the issues of surrender of the impugned land and the compensation amount. On 20 April 2012, the Land Administrator prepared and served the award in Borang H (s. 16 of the LAA) to the appellant. In the award, it was decided that there would be a nominal payment for the impugned land. The Land Administrator considered that the impugned land had been surrendered through the submission of Form 12B. In his written award, the Land Administrator held, *inter alia*, as follows:

> 3.1 ... Berdasarkan kepada Borang 12B yang diserah hantar dan diluluskan oleh Pengarah Tanah dan Galian Negeri Selangor pada 11 Januari 1999 maka telah berlaku penyerahan sebahagian daripada tanah bagi lot-lot berkenaan. Maka tanah-tanah tersebut telahpun menjadi tanah Kerajaan (state land) pada tarikh 11 Januari 1999 dan pihak Orchard Circle Sdn. Bhd. tidak lagi mempunyai kepentingan ke atas tanah tersebut.

[15] The Land Administrator's finding that the impugned land had already been surrendered was based solely on his finding of fact in relation to the relevant authorities' approvals of the submissions for subdivision and surrender that had been made by the appellant to the relevant authorities. This court is of the considered view that the Land Administrator's conclusion that the impugned land had already been surrendered which was premised only on such finding of fact is questionable. The Land Administrator did not examine the requirements of the law in the NLC to see whether the surrender of the impugned land had been effected in law. Likewise, the learned High Court Judge did not examine the law on surrender of the impugned land under the NLC. The learned High Court Judge accepted the Land Administrator's finding. Her Ladyship, unreservedly, stated that "this court has considered that portion of the land surrendered, this court will not include that portion which has been surrendered into calculation of the compensation award."

[16] This court finds it is necessary to examine the provisions of the NLC in Part Twelve – Surrender of Title, particularly from ss. 196 to 201 of the NLC, in order to determine when the surrender of the impugned land had been effected under the NLC. The question raised by the appellant is in a form of a question of fact, but in substance is a question of law. Hence, this court is of the considered view that the appellant's appeal has met the threshold of appealability under s. 49(1) of the LAA.

Issue On Appeal In Relation To An Award Of Compensation

[17] Flowing from the above, the outcome of the finding of the question of law will definitely have a direct bearing on the award of compensation. However, the issue here in relation to the award of compensation is not about

whether the acquisition of the impugned land was adequately compensated or not. The real issue is whether the value of the impugned land ought to be assessed or not. If the law requires the value of the impugned land to be assessed, but it was not done, then the issue is not about the award of compensation. The material issue is whether the proper adjectival law was administered and accorded to the appellant for the compulsory acquisition of the impugned land. Therefore, in substance, this appeal is not a complaint pertaining to the award of compensation, but pertains to whether the appellant had the right of fair assessment for its impugned land.

Section 37(2) Of The LAA

[18] With regard to the application of s. 37(2) of the LAA, this section is only relevant if the value of the impugned land had been assessed in the land inquiry. It is inapt to apply the section when in the first place the value of the impugned land was not assessed at the land inquiry because the Land Administrator had found that the impugned land had already been surrendered to the State Authority.

The Question Of Law – Whether The Impugned Land Had Or Had Not Been Surrendered On 20 December 2001 (The Date Of The Gazette)

Approval Date – 11 January 1999

[19] According to the first respondent's submission, the impugned land had in fact been surrendered on 11 January 1999 when the Director of Land and Mines, Selangor, approved the Form 12B, which was submitted by the appellant. This submission was adopted by the second respondent. The Land Administrator made a finding of fact that the impugned land was surrendered on 11 January 1999 after having taken into consideration all the applications and submissions made by the appellant to the various agencies pertaining to its development project.

[20] It is critical to examine the requirement of the law stipulated in the NLC, not extrinsic facts, in order to determine whether the surrender of the impugned land had been effected in law. The date Form 12B was approved by the Director of Land and Mines, Selangor, could not be equated as the date the impugned land was effectively surrendered.

[21] Section 200(1) of the NLC reads as follows:

> (1) Any application for approval by a proprietor wishing to surrender a part only of the land comprised in his title shall be made in writing to the Land Administrator in Form 12B, and shall be accompanied by:
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> (a) such fee as may be prescribed;
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> (b) a plan showing the details of the proposal, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;

(c) all such written consents to the making of the application as are required under paragraph 196(1)(c); and

(d) subject to subsection (3), the issue document of title to the land.

(2) Upon receiving any such application, the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land.

(3) An application under subsection (1) may be submitted without the issue document of title if that document is in the hands of any person as chargee, or has been deposited with any person as security for a loan; but in any such case, the application shall be accompanied instead by a copy of a request by the proprietor, served on that person under subsection 244(2) or, as the case may be, subsection 281(4), for the production of the document at the Land Office within fourteen days of the date thereof.

(4) In a case falling within subsection (3), no action shall be taken on the application until the issue document, or a replacement thereof, is in the hands of the Land Administrator; and accordingly, if the document is not produced pursuant to the request referred to in that subsection, or to any notice served under section 15 on default in compliance with the request, title in continuation (or, where appropriate, a duplicate issue document only) shall be prepared under Chapter 3 of Part Ten as if the circumstances were as specified in paragraph 166(1)(c).

[22] The law requires that submission of Form 12B must be accompanied by payment of the prescribed fee, a plan showing the details of the proposed surrendered land, written consents from relevant parties (as stipulated in s. 196(2)(a) to (d) of the NLC and the issue document of title to the land.

[23] In the present case, the issue of document of title to the impugned land was not submitted together with the Form 12B. Despite the absence of the issue document of title, the application was approved by the Director of Land and Mines, Selangor on 11 January 1999.

[24] Following the approval by the Director of Land and Mines, Selangor, on 11 January 1999, the Land Administrator was required to comply with the procedure stipulated in s. 201(4) of the NLC which reads as follows:

(4) On approving, or being informed by the State Director that he has approved, the surrender, the Land Administrator shall:

(a) revise (by reference to the estimated area of the part to be retained) the rent payable by the proprietor;

(b) notify the proprietor of the approval and the revised rent; and

(c) make, or cause to be made, a memorial of the surrender on the register and issue documents of title to the land.

[25] According to s. 201(4) of the NLC, upon approval of the surrender, it is mandatory that the Land Administrator shall (i) revise the rent payable by the proprietor, (ii) notify the proprietor of the approval and revised rent, and (iii) make, or cause to be made, a memorial of the surrender on the register and issue documents of title to the land.

[26] This court is of the considered view that the surrender of the impugned land could only be construed as effected upon the compliance of s. 201(4)(a) to (c) of the NLC. The word "shall" connote a mandatory obligation on the part of the Land Administrator to comply with the requirements in s. 201(4)(a) to (c) of the NLC. In this present case, there was no revision of the payable rent, no notification to the appellant of the approval and of any revised rent and no memorial of the surrender was made on the register and issue documents of title to the impugned land on or before 20 December 2001 (the date of the *Gazette*) or 10 December 2001 (the date in the Borang D).

[27] "The Land Administrator shall make, or cause to be made, a memorial of the surrender on the register and issue documents of title to the land" is one of the requirements for the surrender of the impugned land to be considered as effected. In the present case, the memorial of the surrender of the impugned land on the registered document of title was only made, or caused to be made, sometime in 2012 *via* Perserahan No. 3354/2012. In the opinion of this court, the earliest date the surrender of the impugned land was completed and effected was in the year 2012.

[28] During the first land inquiry which took place on 24 December 2002, the Land Administrator found that the impugned land had already been surrendered to the State Authority. Likewise, during the second land inquiry, which took place on 7 June 2011, 28 June 2011, 8 September 2011, 6 October 2011 and 17 November 2011, the Land Administrator again found that the impugned land had already been surrendered. On both occasions, there was no memorial of the surrender made on the register and issue documents of title to the impugned land. This is evident during the inquiry held on 7 June 2011 when Puan Ruzilawati binti Surib, Pegawai Unit Perundangan (Bahagian Pengurusan Tanah) Pejabat Tanah Daerah Hulu Langat admitted that at that material time, there was no endorsement on the title pertaining to the surrender of the impugned land because of incomplete document ("dokumen tidak lengkap") in reply to a question from the Land Administrator.

[29] During the inquiry held on 8 September 2011, Puan Ruzilawati admitted that the authority could approve the surrender, but could not carry out the surrender. The question that was put to her was as follows:

AS: But looking at all the sections, jelasnya, I am putting it to you bahawa tanpa issue document of title, perkara serahan tidak boleh dilaksanakan. You can approve, but cannot carried out, according to this, betul? A

RS: Ya.

[30] The above records clearly show that s. 201(4) of the NLC was not complied with on or before 20 December 2001 or 10 December 2001 as well as at the time the second land inquiry was held in year 2011. The requirements of s. 201(4) of the NLC were only complied with in 2012 when the memorial of the surrender of the impugned land was made on the registered document of title *via* Perserahan No. 3354/2012. B C

[31] The learned High Court Judge in her judgment held as follows:

> [39] The Federal Court decision in *Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors* [2021] 1 MLJ 180 held that:
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> > [27] SILK Highway has been operating since 2004 and serving the needs of the public. If the contention of Orchard Circle is to be adopted, in that Form D was quashed and the whole acquisition is nullity, it would create an absurd situation and detrimental to public interest as the lands now forms the SILK Highway and are being used by public ... D
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> > [39] In our present case, not only that the lands have been taken possession of, by the state authority, it has already been vested in the state authority. Once the lands are vested with the state authority, there are no provisions in the LAA to revert the lands back to the owner. E
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> [40] Founded on the authority quoted and the facts of this case, even though there was no endorsement on the title, this court is of the considered view the surrender has happened. The endorsement on the title could not be carried out as OC did not surrender the original title to the land office for the purpose of endorsement. In the view of this court, this does not negate the fact that there was a surrender prior to SILK concessionaire coming into the picture. F G
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> [41] Moreover, the endorsement on the title could not be conducted as OC did not surrender the physical original title. In other words, so long as OC does not surrender the physical title, the endorsement on the title could not be carried out. In the view of this court, it cannot be that there is no surrender of title simply because the physical title has not been endorsed due to the failure or unwillingness of OC to surrender the physical title to the land office. H

[32] This court could not agree with the above finding of the learned High Court Judge. First, the learned High Court Judge has misconceived the context of the two passages of the Federal Court judgment reproduced in the High Court judgment. Paragraph [27] of the Federal Court judgment is the I

submission made by the second respondent here when the case was at the Federal Court in an earlier proceeding; therefore, it has no value. Paragraph [39] is the observation and finding of the Federal Court in relation to the first question posed before the apex court which was a question that was related to the interpretation of s. 8(4) of the LAA and has nothing to do with the question before this court as to when the surrender of the impugned land was effected.

[33] Secondly, whether the appellant had or had not surrendered the issue document of title to the land office for the purpose of endorsement is a secondary consideration. The primary concern ought to be whether the surrender of the impugned land had complied with the requirements of the law in the NLC on or before 20 December 2001.

[34] In *Bayangan Sepadu Sdn Bhd v. Jabatan Pengairan Dan Saliran Negeri Selangor & Ors* [2022] 2 CLJ 1; [2022] 1 MLJ 701, one of the questions of law posed before the apex court, which is relevant to our case, was "whether there was a valid surrender of any part of the land to the State Authority under s. 196(1)(c) read with s. 196(2)(a) of the NLC when the chargee's consent to the same had not been obtained." The relevant parts of the Federal Court judgment laying down the legal propositions which are relevant to our case are reproduced as follows:

> [51] It is clear that in order to be valid surrender, the procedure under s. 200 of the NLC must be complied with. With respect, we are of the view that the High Court and the majority in the Court of Appeal erred in law in reaching the decision that there was a valid surrender as the previous owners did not object to the construction of the retention pond and structures on the land. On the factual matrix of the present case as alluded to earlier in the judgment, there was no evidence to show that any of the procedures in ss 196, 200 and 201 of the NLC had been adhered to ...
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> [52] We would like to emphasis [*sic*] that the surrender of any private land must be made with the consent of both the registered proprietor and the State Authority and must be strictly complied with the relevant statutory provisions of the NLC. We venture to say that these provisions are made for the purpose of safeguarding the interest of the registered proprietor. Where the procedures as stipulated by the provisions of the NLC are not adhered to, grave doubts are cast on the validity and/or legality of the surrender. In the absence of the consent of CIMB/charge and by merely relying on the documents and/or letters produced by the respondents as enumerated in para [7] of this judgment, it cannot be assumed that all mandatory requirements under the provisions of the NLC had been adhered to when the State Authority gave its consent to transfer.

[35] One of the reasons the apex court allowed the appeal was that the provisions in the NLC in relation to the surrender of the land were not strictly adhered to. In our present case, failure to comply with the relevant provisions in the NLC, particularly s. 201(4)(a) to (c), could result to grave doubt being cast on the validity of the surrender on 11 January 1999.

[36] This court also finds that there were provisions of the NLC other than s. 201(4) that were not adhered to. There was no plan showing the details of the proposed surrender land (specifically the impugned land) and the delivery of the issue document of title as required under ss. 200(1)(b) and (d) of the NLC, and read together with sub-ss. (3) and (4) of the same provision.

[37] The approach taken by the High Court for the compensation in relation to the impugned land was on the basis that the impugned land had already been surrendered. Hence, this court finds the High Court fell into error of law in accepting that the impugned land could not be assessed because it had already been surrendered.

[38] This court further finds that the fact that the impugned land was originally intended to be surrendered for the purpose of the appellant's development project would be a relevant factor to be considered in determining the land value in the assessment of the compensation amount.

[39] This court opines that whether the impugned land would have any commercial value in view of the fact that it was intended to be surrendered for the appellant's development project ought to be determined by the High Court Judge assisted by the assessors. This issue was not considered by the High Court Judge because the High Court Judge dismissed it on the footing that the impugned land had already been surrendered. A relevant passage of the valuation report prepared by Appraisal Property Consultants (M) Sdn Bhd appointed by the second respondent (attached to the letter dated 20 April 2004) is worth mentioning here:

> The principle of compensation in land acquisition dictates that the landowner be compensated for loss or damage as a result of the acquisition of his land and that the landowner's position should be the same before and after the acquisition, *ie*, the landowner must not be better off or worse off after the acquisition. In our present case, the landowner had agreed to surrender the acquired portion of land before the acquisition in consideration of obtaining planning permission. The landowner cannot subsequently deny the fact that such an agreement to surrender was made prior to the acquisition and consequently claim the market value of the portion of land which the landowner had already agreed to surrender. To compensate the landowner according to the Market Value of the land which the landowner had already agreed to surrender would place the landowner in a better position after the acquisition than before the acquisition. In view of the foregoing, we are of the opinion that the landowner is not entitled to claim the market value for the portion of land acquired.

[40] Notwithstanding that the impugned land was intended to be surrendered for the purpose of the appellant's development project at the material time, that could not deprive the appellant's right to a proper assessment exercise of the value of the impugned land which had not been

effectively surrendered according to the NLC. Whether the impugned land ought not to be assessed based on market value, as suggested by the second respondent's valuer, or otherwise, is to be determined in the assessment exercise.

[41] The appellant ought to be accorded the right to present its case on the basis that the impugned land had yet to be surrendered in law at the material time. Article 13(2) of the Federal Constitution accords the appellant a fundamental right to receive an adequate compensation. What could be the adequate compensation amount based on the peculiar facts of this case is a question for the High Court Judge, assisted by the assessors, to determine. The fundamental right of the appellant should be protected regardless of what the adequate compensation amount would be at the end of the assessment exercise.

[42] In the premises, based on the findings of this court on the law of effective surrender of land under the NLC, the question of law posed before this court must therefore be answered in the negative.

Conclusion

[43] For completeness, this court intends to clarify the clerical errors made in the broad grounds delivered on 25 August 2023, especially the part that stated the date of the *Gazette* was 10 December 2001, when in fact, the correct date is 20 December 2001. The earlier date was the date stated in the Borang D; whereas, the latter date of 20 December 2001 was the date when the *Gazette* was published. The clerical errors found in the broad grounds do not in any manner affect the reasoning, judgment and the final outcome of the decision of this court.

[44] For the reasons as stated above, this court, in a unanimous decision, found there were merits in the appeal and allowed the appeal. This court further ordered that paras. "a" and "b(i)" of the High Court order dated 1 July 2022 be set aside. This court also ordered that the matter be remitted back to the High Court for assessment of the compensation amount in relation to the impugned land before the same High Court Judge. Lastly, this court ordered costs of RM5,000 to be paid by the first and second respondents respectively to the appellant. The costs payable by the second respondent are subject to the allocatur fee. The costs payable by the first respondent are not subject to the allocatur fee.